

Serial No. 09/257,208  
Docket No. AM9-98-093

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re Application of:**

Dryer et al.

**Serial No.:** 09/257,208

**Group Art Unit:** 2174

**Filed:** February 25, 1999

**Examiner:** Sax, S.

**For:** METHOD AND SYSTEM FOR REAL-TIME DETERMINATION OF A  
SUBJECTS INTEREST LEVEL TO MEDIA CONTENT

Honorable Assistant Commissioner of Patents  
Washington, D.C. 20231

**PETITION UNDER 37 C. F. R. §1.181 FOR WITHDRAWAL OF**  
**NOTICE OF DEFECTIVE APPEAL BRIEF, ENTRY OF**  
**AFTER-FINAL AMENDMENT, AND FOR AN EXAMINER'S ANSWER**

Sir:

Comes now the Applicant and for this Petition states as follows:

1. That an Amendment which amended independent claims 1, 12, 23, 34, 45 and 53-55 to include the limitation of claim 62 (e.g., "*wherein said determining means adaptively infers said level of interest*") was filed on January 25, 2005. However, in an Advisory Action dated March 1, 2005, the Examiner stated that he refused to enter the Amendment because it raised new issues, stating although previously claim 62 showed this feature, it is now combined with the features of the other dependent claims and thus those claims require further search and consideration in view of the new combination of features".
2. That the Amendment filed herein on January 25, 2005 clearly does not "raise new issues" as alleged by the Examiner. Therefore, on April 21, 2005, Appellant filed a Second After-Final Amendment which was substantially the same as the January 25th Amendment, to request that the Examiner reconsider his unreasonable refusal of entering the January 25th Amendment;

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3. That in a Notice of Non-Compliant Appeal Brief dated July 13, 2005, the Examiner again refused to enter the After-Final Amendment filed on January 25, 2005 and the Second After-Final Amendment filed on April 21, 2005.

4. That contrary to the Examiner's assertions in the Advisory Action dated March 1, 2005, the January 25, 2005 Amendment and contrary to the Examiner's assertions in the Notice of Non-Compliant Appeal Brief, the Amendment filed on April 21, 2005 clearly did not raise new issues and did not require further search by the Examiner, and therefore, should have been entered by the Examiner.

Therefore, Appellant respectfully requests the following:

- a) that the Notice of Non-Compliant Appeal Brief be withdrawn,
- b) that the Amendment of January 25, 2005 (or the Second After-Final Amendment filed on April 21, 2005) be entered; and
- c) for an Examiner's Answer in response to the Appeal Brief filed on April 22, 2005.

Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Assignee's Deposit Account number 09-0441.

Dated: 8/15/05

Respectfully submitted,



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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that the foregoing Petition was filed by facsimile with the United States Patent and Trademark Office, Examiner Steven Sax, Group Art Unit # 2174 at fax number 571-273-8300 this 5th day of August, 2005.



Phillip E. Miller  
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